

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,988

)

Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a fifty-one-year-old woman with a ninth grade education. She has worked as a packer for a mail order gift store and as a nurses aide. She last worked (as a nurses aide) in July, 1995.

The petitioner has a history of chronic back pain that has grown progressively worse over the past few years. In notes of an office visit on August 1, 1995, her doctor noted that she had recently stopped working due to severe pain in her neck and back that radiated down her legs and caused numbness in her arms. The doctor's examination was positive for "significant muscle spasms and exquisite tenderness to palpitation bilaterally" in the thoracic and lumbar areas, as well as decreased flexion and range of motion.

An MRI exam on August 14, 1995, revealed "considerable spinal stenosis at L4-5" as well as other significant, though less severe, spinal deformities. She has been referred to a neurosurgeon for further treatment.

The petitioner maintains that she is in constant pain, that she sometimes cannot perform even light physical activities (such as meal preparation) without assistance, and that she frequently has to sit with her legs raised. DDS concedes that the petitioner cannot return to her past work, but found that she can perform light work that requires her to be on her feet all day and that entails bending and repeated lifting of up to 10 pounds.<sup>(1)</sup> However, given the petitioner's diagnosis (supra) and her uncontroverted allegations of pain and limitations,<sup>(2)</sup> it is found that the petitioner would be disabled from all but, perhaps, sedentary work for the foreseeable future.

### ORDER

The Department's decision is reversed.

### REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case uncontroverted evidence establishes that the petitioner suffers from a severe spinal stenosis that causes her to be in constant pain, and which prevents her from performing activities that entail significant lifting and being on her feet for extended periods of time, and which is likely to last for at least twelve consecutive months. This would preclude all but "sedentary" work as it is defined in the regulations. 20 C.F.R. § 416.967. The regulations further provide that a person of the petitioner's age, education, and work experience is considered disabled if she is limited to sedentary work. 20 C.F.R. § 404, Subpart P, Appendix II, Rule No. 201.09. Therefore, the Department's decision is reversed.

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1. DDS does not maintain that the petitioner's condition is likely to improve within twelve months.
2. The Department declined the opportunity to cross-examine the petitioner regarding her complaints of pain and limitations.